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BEFORE THE ARIZONA BOARD OF
OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

ARIZONA BOARD OF
OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

IN THE MATTER OF:

JAMES I. MILLER, D.O.
Holder of license No. 3063 for the
practice of osteopathic medicine in the
State of Arizona

Case Nos. 2748, 2764, 3023, 3095M

**STIPULATION AND
CONSENT ORDER**

STIPULATION

By mutual agreement and understanding, the Arizona Board of Osteopathic Examiners (hereafter "Board") and James I Miller, D.O. (hereinafter "Respondent"), the parties hereto agree to the following disposition to this matter.

1. Respondent acknowledges that he has read this Stipulation and Consent Order; and, Respondent is aware of and understands the content of this document.
2. Respondent understands that by entering into this Stipulation, he voluntarily relinquishes any rights to a hearing on the matters alleged as grounds for Board action or to seek judicial review of the consent order in state or federal court.
3. Respondent understands that this Stipulation and Consent Order will not become effective unless approved by the Board and signed by its Executive Director.
4. Respondent further understands that this Stipulation and Consent Order, once approved and signed, shall constitute a public record as required by A.R.S. §§ 32-1855(K).
5. Dr. Miller agrees that the Board shall adopt the Findings of Fact, Conclusions of Law and Order set forth below. For purposes of this Consent Agreement only, Dr. Miller admits that the Findings of Fact and Conclusions of Law are true and accurate. The Consent Agreement, Findings of Fact, Conclusions of Law, and Order are a compromise of a disputed matter between Dr. Miller and the Board, and Dr. Miller consents herein for the purpose of terminating what would otherwise be a protracted, expensive, and to some extent futile exercise. The matters involved in this proceeding

involve general surgery cases. Dr. Miller has not engaged in the practice of general surgery in almost a year and desires to engage in other aspects of the practice of medicine. Nothing contained herein constitutes an admission by Dr. Miller for any purpose other than to conclude this disputed matter before the Board.

STATEMENT OF FACTS

6. This matter came before the Board of Osteopathic Examiners in medicine and Surgery (hereafter "Board") at a public meeting on January 18, 2003 regarding James I. Miller, D.O. (hereafter "Respondent"); and the Board and Respondent mutually agree to a consent order for a resolution of these matters.

7. The Arizona Board of Osteopathic Examiners in medicine and Surgery is empowered, pursuant to A.R.S. § 32-1800, et seq. to regulate the licensing and practice of osteopathic medicine in the State of Arizona.

8. Respondent is a licensee of the Board and the holder of License No. 3063 for the practice of osteopathic medicine in the State of Arizona.

9. Medical Record 80-13-21. A 53-year-old patient was seen by a physician at West Valley Emergency Center who had had abdominal pain for two days, had become constipated and had taken 30 ounces of prune juice. The emergency room physician telephoned Dr. Miller requesting that the patient be placed under his service at Maryvale Hospital and correctly reported to Dr. Miller that while there was leukocytosis of 15,000, a CT Scan of the abdomen was negative for appendicitis. (A CT Scan is 98 percent accurate for appendicitis.) The patient was admitted that evening to Maryvale Hospital. The following day Dr. Miller evaluated the patient at 5:00 p.m., correctly determined that the patient did in fact have appendicitis and successfully performed an appendectomy. The appendix had not ruptured, however, due to the high white blood cell count it was the Board's opinion that the patient should have been seen much earlier than 5:00 p.m. of the day following admission.

10. Medical Record #66-46-28. Dr. Miller was asked to see an 18-year-old pregnant patient, with a long-standing history of biliary colic. Dr. Miller successfully performed a

laparoscopic cholecystectomy. However, Dr. Miller failed to document informed consent regarding potential risks of the operation to the fetus and should have first obtained an obstetrical consult.

CONCLUSIONS OF LAW

1. Pursuant to Arizona Revised Statutes § 32-1800, et seq., the Arizona Board of Osteopathic Examiners in Medicine and Surgery has subject matter and personal jurisdiction in this matter.

2. Respondent engaged in unprofessional conduct as defined in A.R.S. § 32-1854:

- (6) Engaging in the practice of medicine in a manner may harm a patient or that the Board determines falls below the community standard.

ORDER

Pursuant to the authority vested in the Board, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall be and is hereby restricted from acting as primary surgeon for any major surgery and providing postoperative follow-up care for patients who were subjects of the major surgery, however, Respondent may act as surgical assistant for such surgeries.

2. Respondent is hereby authorized by this Board to perform the diagnosis and treatment of venous varicosities of the lower extremity, the facial injection of Botox, the removal of aging spots, and treatment of spider veins.

3. If Respondent wishes to perform any other minor surgeries or procedures, Respondent shall first provide evidence to the Board that he has been sufficiently educated and trained to do so. Upon presenting written request and such evidence to the Board, the Board staff may place Respondent's request on the Board's next available agenda.

4. Following entry of this Order, Respondent shall submit to the Board complete and legible copies of his medical record pertaining to the first ten cases for each of the four procedures

authorized above (i.e., 40 charts) performed by him following the entry of this Order. Respondent shall submit such medical records for each such procedure to the Board within ten days of his completion of each such procedure.

5. Respondent shall reimburse the Board for all expenses associated with the investigation, hearing and continued monitoring of this matter.

6. Respondent shall continue to meet all licensing requirements such as continuing medical education and renewal requirements including applicable fees pursuant to A.R.S. § 32-1825.

7. Respondent's failure to comply with the requirements of this Order shall constitute unprofessional conduct as defined at A.R.S. § 32-1854(26), as amended, and may be considered as grounds for further disciplinary action (e.g., suspension or revocation of license) in the event that Respondent fails to comply with any of the requirements of this Order.

This Order is effective this 27th day of March 2003.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

By: Elaine LeTarte
Elaine LeTarte, Executive Director
9535 E. Doubletree Ranch Rd.
Scottsdale AZ 85258-5539
(602) 657-7703

ACCEPTED this 26 day of March, 2003.

James I. Miller
James I. Miller, D.O.

Served by personal service or
By sending U.S. certified mail
this 28th day of March, 2003 to:

James I. Miller, D.O.
19810 N. 68th Drive
Glendale, AZ 85308

Copy mailed this 26th day of March, 2003,
to:

Stephen W. Myers, Esq.
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